

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William Rasenberger	Team: Squad #7	CCRB Case #: 202106288	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 07/02/2021 3:45 PM, Sunday, 07/18/2021 4:00 PM	Location of Incident: § 87(2)(b) § 87(2)(b)	Precinct: 52	18 Mo. SOL 1/2/2023	EO SOL 1/2/2023	
Date/Time CV Reported Mon, 10/18/2021 8:45 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 10/18/2021 8:45 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. PO Genesis Perezvilomar	25976	965410	052 PCT
2. PO David Guzman	10187	961803	052 PCT
3. PO Elyjah Bennett	17243	960236	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Ravena Seonarine	18566	964763	052 PCT
2. PO Evangellos Georgakis	23632	969091	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Genesis Perezvilomar	Abuse: On July 2nd, 2021, Police Officer Genesis Perezvilomar drew her gun.	§ 87(2)(b)
B. PO Genesis Perezvilomar	Abuse: On July 18th, 2021, Police Officer Genesis Perezvilomar entered § 87(2)(b)	§ 87(2)(b)
C. PO David Guzman	Force: On July 18th, 2021, Police Officer David Guzman used physical force against § 87(2)(b)	§ 87(2)(b)
D. PO Elyjah Bennett	Force: On July 18th, 2021, Police Officer Elyjah Bennett used physical force against § 87(2)(b)	§ 87(2)(b)
E. PO David Guzman	Abuse: On July 18th, 2021, Police Officer David Guzman searched § 87(2)(b)'s personal property.	§ 87(2)(b)

## Case Summary

On October 18<sup>th</sup>, 2021, the CCRB received the following complaint via telephone from § 87(2)(b) [BR 1].

At about 5:10 p.m. on July 2<sup>nd</sup>, 2021, § 87(2)(b) called 911 from his apartment, § 87(2)(b) inside of § 87(2)(b) in the Bronx, to report that he had just seen § 87(2)(b) his § 87(2)(b) neighbor, who allegedly robbed him on June 25<sup>th</sup>. Over the next forty-five minutes, § 87(2)(b) placed two other calls to 911, in which he reported seeing a male with a firearm and hearing gunshots. Police Officers Ravena Seonarine and Genesis Perezvilomar of the 52<sup>nd</sup> Precinct responded at about 6:00 p.m. PO Perezvilomar drew her firearm as she approached § 87(2)(b)'s apartment [Allegation A: Abuse of Authority – Gun Drawn, § 87(2)(g)] but quickly holstered it when she saw § 87(2)(b) in his doorway.

On July 18<sup>th</sup>, 2021, § 87(2)(b) called 911 to report that § 87(2)(b) was harassing him. Minutes later, § 87(2)(b) mother called 911 and alleged that § 87(2)(b) was menacing § 87(2)(b) with a knife. Multiple officers assigned to the 52<sup>nd</sup> Precinct, including PO Perezvilomar and PO Seonarine, responded to the location. § 87(2)(b) mother and other building residents told the officers that they had seen § 87(2)(b) point a knife at § 87(2)(b) and other children. Officers then confronted § 87(2)(b) as he stood in the doorway to his apartment. After a brief conversation, § 87(2)(b) tried to shut his door. Officer Perezvilomar stuck her foot out to prevent the door from closing and then, along with Officers Seonarine, David Guzman, Elyjah Bennett, and Evangellos Georgakis, forced her way into the apartment [Allegations B: Abuse of Authority – Entry of Premises, § 87(2)(g)]. PO Guzman and PO Bennett apparently then pushed § 87(2)(b) who fell to the ground [Allegation C and D: Force – Physical Force, § 87(2)(g)]. After § 87(2)(b) was handcuffed, he told the officers that he needed pants and shoes to wear out of the apartment. Without permission, Officer Guzman entered § 87(2)(b)'s bedroom, where he opened a shoe box and removed a pair of slippers [Allegation E: Abuse of Authority – Search, § 87(2)(g)].

The CCRB is in possession of fifteen BWC videos received across three separate requests [BR 2, 3, and 4], and one CCTV video [BR 5].

## Findings and Recommendations

### Allegation A: Abuse of Authority – On July 2<sup>nd</sup>, 2021, Police Officer Genesis Perezvilomar drew her firearm.

At about 5:10 p.m. on July 2<sup>nd</sup>, 2021, § 87(2)(b) called 911 from his apartment, § 87(2)(b) inside of § 87(2)(b) in the Bronx. He reported that he had seen the person – § 87(2)(b) – that had robbed him on June 25<sup>th</sup>, 2021. § 87(2)(b) had not been arrested for the alleged crime. § 87(2)(b) stated during his CCRB interview [BR 6] that this is all he told the 911 operator. However, 911 event information [BR 7] shows that at 5:35, § 87(2)(b) placed a second call to 911 and told the operator that a firearm was involved. § 87(2)(b) called 911 again about ten minutes later and complained that the police still had yet to arrive. At 5:55, § 87(2)(b) called 911 for the fourth and last time and reported that he had heard gunshots. He promptly hung up without providing further information. At 6:02 p.m., Officers Perezvilomar and Seonarine responded to § 87(2)(b). PO Perezvilomar's body-worn camera recording [BR 8] at 01:23 shows her entering the building. She walks up the stairs to § 87(2)(b) floor very slowly. At 01:33 in PO Seonarine's BWC recording [BR 9], PO Perezvilomar apparently holsters her firearm; before this point, it was not clear that her gun was drawn. At 01:35, § 87(2)(b) who remains out of frame, is heard stating "I don't know why you got your gun drawn, 'cause it ain't no fucking gun." § 87(2)(b) alleged during his interview that PO Perezvilomar pointed her firearm

at him. Her and PO Seonarine's BWC videos show that PO Perezvilomar never pointed her firearm; her gun was holstered as she approached § 87(2)(b)'s door. § 87(2)(b) then tells the officers that § 87(2)(b) had just threatened him and was running around the building. PO Perezvilomar asks him whether § 87(2)(b) has a gun, and, at 02:29 in her own BWC recording, tells § 87(2)(b) that she and PO Seonarine are there because § 87(2)(b) reported seeing someone with a gun and hearing shots. § 87(2)(b) says "that's a lie." A few minutes later, PO Perezvilomar arrested § 87(2)(b) outside of § 87(2)(b) for the robbery on June 25<sup>th</sup> that § 87(2)(b) alleged. During her CCRB interview [BR 10], PO Perezvilomar testified at length about the arrest. She had no recollection, though, of drawing her firearm before approaching § 87(2)(b)'s apartment. (At the time of the interview, the investigation did not possess PO Perezvilomar's BWC footage or other video evidence that could aid the officer's recollection.)

Under PG 221.01, officers may use force when it is reasonable to ensure the safety of a member of service or a third person, or otherwise protect life, or when it is reasonable to place a person into custody or to prevent escape from custody. Any application or use of force must be reasonable under the circumstances. The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. When a uniformed member of service determines that the potential for serious physical injury is no longer present, the uniformed member of service will holster the firearm as soon as practicable. NYPD Patrol Guide 221.01 [BR 16].

Although § 87(2)(b) denied that he mentioned a firearm during his call to 911 on July 2<sup>nd</sup>, a transcription of the call, i.e. event information, shows that § 87(2)(b) stated not only that a firearm was involved, but that shots had been fired. Consequently, this was PO Perezvilomar's understanding when she responded, as evidenced by her statements to § 87(2)(b) BWC video shows that PO Perezvilomar had her firearm drawn as she ascended the staircase to the second floor, where § 87(2)(b) lives. She apparently kept the firearm close to her body and pointed downwards. As soon as she saw § 87(2)(b) she re-holstered her firearm; she never pointed it at him. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation B: Abuse of Authority – On July 18<sup>th</sup>, 2021, Police Officer Genesis Perezvilomar entered § 87(2)(b).**

**Allegation C: Force – On July 18<sup>th</sup>, 2021, Police Officer David Guzman used physical force against § 87(2)(b).**

**Allegation D: Force – On July 18<sup>th</sup>, 2021, Police Officer Elvjah Bennett used physical force against § 87(2)(b).**

**Allegation E: Abuse of Authority – On July 18<sup>th</sup>, 2021, Police Officer David Guzman searched § 87(2)(b)'s property.**

At about 10:14 p.m. on July 18<sup>th</sup>, 2022, § 87(2)(b) called 911 to report that § 87(2)(b) was harassing him. Event Information corresponding to the 911 call and subsequent police response [BR 11] shows that, while on the phone with 911, § 87(2)(b) threatened to assault § 87(2)(b) and put him in the hospital. Just four minutes later, § 87(2)(b) mother called 911 and reported that § 87(2)(b) had pointed a knife at her son. Two minutes later, she told the operator that she could see the knife in § 87(2)(b)'s hand. The job was assigned to Officers Perezvilomar and Seonarine. They, and multiple other officers, responded to § 87(2)(b) at about 10:24 p.m. At 01:00 in PO Perezvilomar's BWC recording [BR 12], a woman tells the officer that § 87(2)(b) is "unstable" and had just taken out a knife. At 01:08, in the background, § 87(2)(b) is seen walking out of the building. The woman gestures toward him and tells PO

Perezvilomar that he is the “little boy” that § 87(2)(b) threatened with a knife. At 01:33 in PO Perezvilomar’s recording, an unidentified man tells the officer that § 87(2)(b) wielded a knife at two small children as well as § 87(2)(b). At 02:06, PO Perezvilomar asks the woman that had just identified § 87(2)(b) as the victim whether she saw § 87(2)(b) wielding a knife; the woman replies “everybody, we all saw it.” PO Perezvilomar and other officers then enter the building and walk up to § 87(2)(g) floor. At 02:15, within earshot of § 87(2)(b) § 87(2)(b) mother tells the officers that § 87(2)(b) pulled a knife out on her son. Multiple times, she repeats the allegation and says that she wants § 87(2)(b) arrested.

At 02:36 in PO Perezvilomar’s recording, she and other officers approach § 87(2)(b)’s apartment. He is standing inside of his doorway, with the door open. PO Perezvilomar testified during her CCRB interview [BR 10] that at this time she had probable cause to arrest § 87(2)(b) for menacing, based on the allegations of § 87(2)(b) mother and others. Although PO Perezvilomar was going to allow § 87(2)(b) to share his account of events, she was going to arrest him regardless of what he said. At 02:21 in PO Bennett’s BWC video, § 87(2)(b) claims that he never left his apartment during the confrontation with § 87(2)(b). According to PO Perezvilomar, § 87(2)(b) was “halfway” between inside and outside of the apartment. While § 87(2)(b) continued to speak -- as seen beginning at 02:37 in PO Guzman’s BWC recording [BR 13] -- both PO Perezvilomar and PO Seonarine put on latex gloves, a common and recognizable precursor to making an arrest. It is undisputed that § 87(2)(b) then tried to shut the door and end the encounter. This is captured at 02:41 in PO Guzman’s recording and at 04:23 in a CCTV video [BR 5] provided by § 87(2)(b). BWC and CCTV footage show that, before this point, § 87(2)(b) remained completely within -- and the officers remained completely outside -- his apartment. PO Perezvilomar testified that she could not wait for a warrant, and allow § 87(2)(b) to retreat into his apartment, because there was potentially evidence to preserve inside, and he continued to pose a danger to § 87(2)(b) and others. She stuck out her foot to prevent the door from closing. BWC footage shows that she was the only officer, initially, that prevented the door from closing. She and Officers Guzman, Georgakis, Seonarine, and Bennett then worked together to force the door open. At 02:58 in PO Guzman’s recording, the officers enter § 87(2)(b)’s apartment. Similar to PO Perezvilomar’s testimony, PO Guzman stated during his CCRB interview [BR 14] that the officers entered the apartment because they had probable cause to arrest § 87(2)(b) and could not allow him to escape. Also, according to PO Guzman, the officers could not allow § 87(2)(b) to shut the door because he had a knife, and they did not know “what his intentions were behind the apartment door.” However, PO Guzman was not responsible for making any decisions, including whether to enter the apartment or to arrest § 87(2)(b). He was just providing back-up for Officers Perezvilomar and Seonarine, to whom the job had been assigned.

Once inside of the apartment, according to § 87(2)(b) “all of the officers” brought him to the ground. He was not able to explain in any detail how the officers did so. At 03:00, PO Guzman’s BWC video shows that both he and PO Bennett (whose own BWC fell off as he tried to open § 87(2)(b)’s door) apparently pushed § 87(2)(b) from the narrow vestibule just inside of the apartment door into the living room. He is then seen falling to the ground. § 87(2)(b) who is disabled and walks with a cane, may have tripped or otherwise lost his balance; it does not appear that PO Guzman or PO Bennett used a significant amount of force against him. Officers then handcuffed § 87(2)(b) without incident. At 03:34 in PO Guzman’s recording, PO Perezvilomar asks § 87(2)(b) where his shoes are. He replies that he does not have any shoes. At 03:40, PO Guzman enters § 87(2)(b)’s bedroom and removes a shoe box from a shelf. At 03:55, PO Guzman opens the shoe box. He takes out a pair of sandals and gives them to § 87(2)(b). PO Guzman acknowledged during his CCRB interview that he did not ask § 87(2)(b) for permission to enter his bedroom or open one of his shoe boxes. Providing § 87(2)(b) with shoes seemed like the “right thing to do,” according to the officer, although he could not say whether his actions were consistent with department policy. PO Perezvilomar was § 87(2)(b)’s arresting officer, as reflected in a report for his arrest [BR 15]. This report shows that § 87(2)(b) was charged with



menacing, acting in a manner injurious to a juvenile, and other crimes.

In *People v. Gonzales*, the facts were as follows. Officers went to the defendant's apartment and knocked on the door. The defendant opened the door, but remained fully within the apartment. When the victim, standing with the officers, identified the defendant as the man that had just sexually assaulted her, he tried to close his door. The police pushed their way inside and arrested him. The court held that the defendant's attempt to close his door was not akin to fleeing, as he never left the constitutionally protected interior of his home in the first place. Even though a defendant, standing inside his doorway, may be as equally exposed to the public as if he were standing completely outside, he is protected from warrantless arrest. *People v. Gonzales* 111 A.D.3d 147 [BR 17].

Like the defendant in *People v. Gonzales* – and against PO Perezvilomar's testimony -- § 87(2)(b) was fully within his apartment while interacting with the officers. § 87(2)(b) was, thus, not in a public place, and so was not fleeing when he closed his door. PO Perezvilomar and PO Guzman testified that § 87(2)(b) could not be allowed to retreat, as he was alleged to have had a knife, and continued to pose a danger to his neighbors. However, it would not have been impractical for the officers to apply for a warrant, and then guard the door (and the windows or fire escape), to mitigate against any possible danger or flight risk. As the job was assigned to PO Perezvilomar, along with PO Seonarine, she was responsible for the decision to enter the apartment without a warrant and was the arresting officer. And, video evidence shows, she alone prevented § 87(2)(b) from closing his door initially. Other officers – who had less information, as they had not interviewed any witnesses, and were standing back as PO Perezvilomar spoke with § 87(2)(b) – then assisted PO Perezvilomar in forcing the door open. § 87(2)(g)

Under PG 221.01, officers may use force when it is reasonable to ensure the safety of a member of service or a third person, or otherwise protect life, or when it is reasonable to place a person into custody or to prevent escape from custody. Any application or use of force must be reasonable under the circumstances. NYPD Patrol Guide 221.01 [BR 16].

BWC video apparently shows that one or both of PO Guzman and PO Bennett pushed § 87(2)(b) from the narrow and cramped vestibule of his apartment into the living room, while ordering him to turn around. The officers did not use significant force. It is possible that § 87(2)(b) who has difficulty standing and walking, tripped or lost his balance before falling to the floor. § 87(2)(g)

In *People v. Jimenez*, the court ruled that a warrantless search incident to arrest is only justified when the search meets two requirements: 1) it is “not significantly divorced in time or place from the arrest,” and 2) there are exigent circumstances. In turn, two interests underlie the exigency requirement: the safety of the public and the arresting officer, and the protection of evidence from destruction or concealment. Accordingly, arresting officers may conduct a warrantless search of a bag or other container that is within the immediate control or grabbable area of a suspect only where the circumstances leading to the arrest support a reasonable belief that the suspect may gain possession of a weapon or be able to destroy evidence located in the container. *People v. Jimenez* 22 N.Y.3d 717 [BR 18].

§ 87(2)(g)

PO Guzman admittedly did not act under the belief that

§ 87(2)(b) could destroy evidence or access a weapon. § 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the second complaint to which § 87(2)(b) has been a party and in which he's been named as a victim [BR 19].
  - § 87(2)(b)
- PO Guzman has been a member of service for five years, over which time he has been the subject of one complaint and one allegation, which was not substantiated. § 87(2)(g)
  - PO Guzman's summary of employment history is included in the case file [BR 22].
- PO Perezvilomar has been a member of service for four years, over which time she has been the subject of two complaints and two allegations, neither of which was substantiated. § 87(2)(g)
  - Her summary of employment history is included in the case file [BR 24].
- PO Bennett has been a member of service for six years, over which time he has been the subject of two complaints and two allegations, neither of which was substantiated. § 87(2)(g)
  - His summary of employment history has been added to the case file [BR 25].
- PO Georgakis has been a member of service for two years, over which time he has been the subject of one case and one allegation, which remains under investigation. § 87(2)(g)
  - His summary of employment history has been added to the case file [BR 26].
- PO Seonarine has been a member of service for four years, over which time she has been the subject of one complaint and one allegation, which was not substantiated. § 87(2)(g)
  - Her summary of employment history is included in the case file [BR 23].

### Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation
- § 87(2)(b)
- There are no notices of claim related to this incident [BR 21].

Squad: 7

Investigator:	<u>Will Rasenberger</u>	<u>Inv. Will Rasenberger</u>	<u>03/16/2022</u>
	Signature	Print Title & Name	Date
Squad Leader:	<u>Manager Vanessa Rosen</u>	<u>April 4, 2022</u>	
	Signature	Print Title & Name	Date

Reviewer:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Title & Name

\_\_\_\_\_  
Date